THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 22366 of 2005

Dated: 08.08.2007

Between:

M/s. Anara Lingeswara Rice & Flour Mills,
(Service Connection No.442, Cat.III),
rep., by its Proprietor, G. Rami Reddym,
Rentichintala Village & Mandal,
Guntur District.

... Petitioner

AND

Transmission Corporation of A.P., Limited,
(A.P. Transco) rep., by its Chairman &
Managing Director, Vidyut Soudha,
Khairatabad, Hyderabad & 4 others.

... Respondents

Counsel for the petitioner : Sri P. Pankaj Reddy

Counsel for the respondents : Sri B.H.R. Choudary
Standing Counsel for Railways.

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 22366 of 2005

ORDER:-

This writ petition is filed for a writ of mandamus to set aside the orders dated 27.05.2005 and 31.08.2005 of respondent Nos.4 and 3 respectively.

The petitioner is a consumer of electricity included in low tension category III. The erstwhile Andhra Pradesh State Electricity Board (for short "the APSEB") initially released supply to the petitioner and respondent Nos.1 and 2 have succeeded to the erstwhile APSEB under the provisions of Andhra Pradesh Electricity (Reform) Act, 1998. On 26.05.2003, the Electricity Act, 2003 (for short "the 2003 Act") came into force and these two enactments have been holding the field both at the time of inspection of the petitioner's premises on 10.02.2004 and at all subsequent times.

The petitioner's service connection was inspected by respondent No.4 on 10.02.2004 and he made a provisional assessment of value of the energy allegedly pilfered by the petitioner at Rs.6,18,124/-. The petitioner was called upon to pay 50% of the said amount in order to have continuity of power supply. The petitioner filed W.P.No.1980 of 2005 and the same was allowed on 14.02.2005, following a Division Bench judgment of

this Court in Writ Appeal Nos.452 and 477 of 2004 dated 11.03.2004, wherein it was held that a consumer is not liable to pay any part of the amount provisionally assessed for the alleged pilferage.

Subsequently, respondent No.4, after giving opportunity to the petitioner, passed a final assessment order vide his proceedings dated 27.02.2005, whereunder he has assessed the value of the energy pilfered by the petitioner at Rs.3,91,247/-. Respondent No.4 while making the final assessment has taken into consideration the period of 300 days and applied three times the normal charges in arriving at the value of the energy pilfered by the petitioner. Feeling aggrieved by the said assessment order, the petitioner filed a statutory appeal before respondent No.3, who, by his order, communicated through his letter dated 31.08.2005 while confirming the factum of pilferage by the petitioner, however, reduced the amount to Rs.3,11,150/-. Respondent No.3, in his order had taken into consideration a total period of 275 days for making assessment. He had adopted three times the normal charges for making assessment, as was done by respondent No.4. Assailing these two orders, the present writ petition is filed.

Heard Sri D.V. Nagarjuna Babu, learned counsel for the petitioner and Sri K. Ramakrishna, learned counsel representing Sri V. Ajay Kumar, learned Standing Counsel for the respondents.

Sri Nagarjuna Babu had drawn my attention to Section 126 (5) of the 2003 Act under which the maximum period for which assessment for pilferage in respect of industrial connections can be made is six months. He had also invited my attention to Section 126 (6) of the 2003 Act and submitted that the penal rate which can be applied for making assessment shall be equal to 1½

times the tariff applicable to the relevant category of services. He therefore submits that the assessment order of respondent No.4, as confirmed by respondent No.3 with modification (insofar as it related to the period of assessment is concerned), is contrary to the aforementioned statutory provisions.

Sri K. Ramakrishna, however, submitted that since the case was booked on the basis of an earlier inspection made in 2001, the respondents have applied the law, as it existed at the time of the previous inspection. He therefore submits that the orders passed by respondent Nos.4 and 3 are not liable to be interfered with.

I have carefully considered the contentions of the learned counsel for the parties.

A reading of the proceedings dated 21.12.2004 shows that on 16.06.2001 inspection was made and again on 10.02.2004 another inspection was made during which an abnormality in the meter was noticed and it was referred to Meter Relay Testing (MRT) Lab, Guntur for testing of the meter and during testing, it was noticed that the meter was tampered. Thus, on the basis of the inspection made on 10.02.2004, the meter was referred to MRT lab and during testing, the factum of pilferage was detected. Reference to the inspection dated 16.06.2001 was evidently made to indicate about the previous inspection and the actual cause, which led to detection of pilferage, has arisen during the inspection made on 10.02.2004. Therefore, I am unable to agree with the learned counsel for the respondents that since the action was initiated on the basis of inspection made on 16.06.2001, the respondents have not taken into consideration the provisions of Section 126 of the 2003 Act.

Sub-sections (5) and (6) of Section 126 of the 2003 Act read as under:

> "126 (5):- If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in cases of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.
>
> 126 (6):- The assessment under the section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in sub-section (5).
>
> Explanation – For the purposes of this section, -
>
> (a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;
>
> (b) "unauthorised use of electricity" means the usage of electricity –
>
> (i) by any artificial means; or
>
> (ii) by a means not authorized by the concerned person or authority or licensee; or
>
> (iii) through a tampered meter; or
>
> (iv) for the purpose other than for which the usage of electricity was authorized."

From the above reproduced provisions, it is clear that in the case of industrial consumers, the respondents are not empowered to make an assessment for a period of more than six months

preceding the date of inspection and they cannot apply the rate at more than 1½ times the normal tariff on which the power supply is made to the industrial consumers.

As already noticed above, both respondent Nos.4 and 3 in their respective orders have ignored the aforementioned mandatory statutory provision both in respect of the period of assessment and the rate at which the assessment shall be made.

For the aforementioned reasons, the writ petition is allowed and both the orders of respondent Nos.4 and 3 are set aside. The matter is remitted back to respondent No.4 to reassess the value of the energy pilfered in terms of Section 126 (5) and (6) of the 2003 Act and keeping in view the observations made in this order.

As a sequel to disposal of the writ petition, WPMP.Nos.28646 and 28645 of 2005 filed by the petitioner for interim relief are disposed of.

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C.V. NAGARJUNA REDDY, J

Date: 08.08.2007
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